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25 AUG 2006

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In re Application of:	:	
FERRELL, Gary W., et al.	:	DECISION REGARDING
U.S. Application No.: 10/559,894	:	SUBMISSION UNDER 37 CFR
PCT No.: PCT/EP2004/051020	:	1.42 AND PETITION UNDER
Int'l Filing Date: 03 June 2004	:	37 CFR 1.47(a)
Priority Date: 12 June 2003	:	
Attorney's Docket No.: SEZ-022	:	
For: UNIFORM CAVITATION FOR	:	
PARTICLE REMOVAL	:	

This decision is issued in response to applicants' "Response To Notification Of Missing Requirements" filed 09 June 2006 which included a declaration executed on behalf of deceased inventor Gary W. FERRELL by his legal representative Frances FERRELL, considered herein as a submission under 37 CFR 1.42, and a "Petition Under 37 CFR 1.47(a)" seeking acceptance of the declaration without the signature of non-signing inventor Jagjit S. RATRA. Deposit Account No. 19-0590 will be charged the required \$200 petition fee for the petition under 37 CFR 1.47(a) (no petition fee is required for consideration of the submission under 37 CFR 1.42).

**BACKGROUND**

On 03 June 2004, applicants filed international application PCT/EP2004/051020. The international application claimed a priority date of 12 June 2003, and it designated the United States. On 23 December 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 12 December 2005.

On 06 December 2005, applicants filed a Transmittal Letter for entry into the U.S. national stage accompanied by, among other materials, payment of the basic national fee.

On 10 March 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date were required.

On 09 June 2006, applicants filed a response to the Notification Of Missing Requirements (with required one-month extension fee). The response included payment of the required surcharge, a declaration executed by one of the three named inventors and by the legal

representative of the deceased inventor (considered below under 37 CFR 1.42), and a petition under 37 CFR 1.47(a) (also considered below). The petition seeks acceptance of the application without the signature of the remaining inventor, Jagjit S. RATRA, whom applicants assert has refused to sign the application documents.

### **DISCUSSION**

#### **1. Submission Under 37 CFR 1.42:**

37 CFR 1.42 states in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

37 CFR 1.497(b)(2) states:

If the person making the oath or declaration or any supplemental oath or declaration is not the inventor (§§ 1.42, 1.43, or 1.47) the oath or declaration shall state the relationship of the person to the inventor, and, upon information and belief, the facts which the inventor would have been required to state. If the person is the legal representative of a deceased inventor, the oath or declaration shall also state that the person is a legal representative and the citizenship, residence, and mailing address of the legal representative.

Pursuant to 37 CFR 1.497(b)(2), the declaration must provide the citizenship, mailing address, and residence information for both the deceased inventor and the legal representative.

Here, the declaration filed by applicants on 09 June 2006 specifically identifies Frances FERRELL as the “legal representative” of deceased inventor Gary W. FERRELL, and it includes separate citizenship, mailing address, and residence information for the deceased inventor and the legal representative. Accordingly, the declaration complies with the requirements of 37 CFR 1.42 and 1.497(b)(2) with respect to the signature provided on behalf of the deceased inventor.

#### **2. Petition Under 37 CFR 1.47(a):**

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants have authorized a charge to Deposit Account No. 19-0590 for required fees. Item (1) is therefore satisfied.

The petition sets forth the last known address of the inventor. Accordingly, item (2) is therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed a declaration executed by one of the three inventors, John F. SCHIPPER, and by the legal representative of deceased inventor Gary W. FERRELL. The declaration includes an unsigned signature block for non-signing inventor Jagjit S. RATRA. This declaration can be treated as having been executed by the available inventor and the legal representative on their own behalf and on behalf of the non-signing inventor (the declaration is properly executed on behalf of the deceased inventor under 37 CFR 1.42, as discussed above). Item (3) is therefore satisfied.

Regarding item (4), the petition asserts that the non-signing inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the non-signing inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires “a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made.”

Here, the evidence submitted to demonstrate Jagjit S. RATRA’s refusal to execute the application papers is contained in the “Statement Of Facts” provided by Thomas SCHNECK, and the exhibits thereto. These materials provide the required firsthand statement confirming the delivery to the non-signing inventor of a request for signature, accompanied by copy of the complete application, and the non-signing inventor’s failure to provide the signed declaration requested. Item (4) is therefore satisfied.

Based on the above, applicants have satisfied all the requirements for a grantable petition under 37 CFR 1.47(a).

### **CONCLUSION**

Applicants’ request for status under 37 CFR 1.42 with respect to the declaration executed on behalf of deceased inventor Gary W. FERRELL by his legal representative, Frances FERRELL, is **GRANTED**.

The petition under 37 CFR 1.47(a) is **GRANTED**. The application is accepted under 37 CFR 1.47(a) without the signature of inventor Jagjit S. RATRA.

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventor at the last known address set forth in the petition, and notice of the filing of the application under 37 CFR 1.47(a) will be published in the Official Gazette.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations for further processing in accord with this decision. The date under 35 U.S.C. 371 (c)(1), (c)(2), and (c)(4) is 09 June 2006.

A handwritten signature in black ink, appearing to read 'R. Ross'.

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Int'l Filing Date: 03 June 2004  
Priority Date: 12 June 2003  
Attorney's Docket No.: SEZ-022  
For: UNIFORM CAVITATION FOR PARTICLE REMOVAL

Dear Mr. RATRA:

You are identified as an inventor in the above identified United States patent application, filed under the provisions of 37 CFR 1.47(a) and 35 U.S.C. 116. Should a patent be granted, you will be designated as an inventor.

As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any part thereof (at a prepaid cost per 37 CFR 1.19) or to make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent agent or attorney presenting written authorization from you. If you care to join the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

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